



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17290/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR TOUSEEF YAQOOB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Ouattara, Legal Representative, Immigration Advice Service
(Manchester)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of Pakistan, who was born in June 1998. He has been in this country now for some six years, having arrived originally in January 2012 when he was granted settlement as a member of his father's family. On 28 August

2014 he was granted indefinite leave to remain as the dependant of a work permit holder.

2. Regrettably, on 8 June 2017 at Minshull Street Crown Court in Manchester the appellant was sentenced to eight months' detention in a young offenders' institute for an offence of actual bodily harm. He was also sentenced to a concurrent sentence of five months' imprisonment for possession of an offensive weapon and a further two months for criminal damage. He also received a concurrent sentence of fourteen days' imprisonment for failure to surrender. The respondent subsequently made a decision to deport him. This was a conducive deportation which was justified under Section 117D of the Nationality, Immigration and Asylum Act 2002 because within the definition provided therein he is a "foreign criminal" and because he is not a British citizen and was convicted of an offence in the United Kingdom which "has caused serious harm". An offence of actual bodily harm by definition is, or so the respondent would argue, an offence which has caused serious harm.
3. The appellant appealed against the decision to deport him and his appeal was heard at Harmondsworth on 15 February 2018 before First-tier Tribunal Judge N M K Lawrence. In a Decision and Reasons promulgated a week later, on 22 February 2018, Judge Lawrence dismissed his appeal. The appellant now appeals to this Tribunal against that decision, permission having been granted by First-tier Tribunal Judge R C Campbell on 29 March 2018.
4. Before me today, on behalf of the appellant, Mr Ouattara relied upon his grounds but made specific submissions. In the first place he said that the judge's decision was "riddled with conclusions but without giving reasons for those conclusions". He gave as an example that the judge had found that the appellant was not dependent on his parents, either economically or emotionally (at paragraph 11) but that no reasons had been given. Similarly, he said that the judge had rejected the appellant's and his father's credibility at paragraph 8, again, without given any or any adequate reasons for his finding.
5. Mr Ouattara then submitted that the judge had been wrong to consider that the appellant was a "foreign criminal" and applied the tests which applied for foreign criminals because he was not in fact someone who was the subject of specific legislation dealing with foreign criminals. He referred the Tribunal to Section 117D(2)(c) of the Nationality, Immigration and Asylum Act 2002, which, he said, applied to persons who have been sentenced to over one years' imprisonment or were persistent offenders.
6. Mr Ouattara then dealt with the question of proportionality and submitted that in all the circumstances the decision was disproportionate because the judge had failed to make distinct findings with reasons as to whether or not the appellant's presence should be protected because of his dependence on his parents, which led to his conclusion that it was not disproportionate to remove him.

7. Mr Wilding made responses to each of these submissions which I have taken fully into account although it is unnecessary for the purposes of this decision to set them out below.

Discussion

8. With regard to the first submission advanced by Mr Ouattara, it is not technically correct to say that the judge had not given any reason for his finding that there was not family life between the appellant and his family. He set out what had been decided in *Kugathas* [2003] EWCA Civ 31, citing from that well-known judgment as follows:

“Neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8”.

9. The judge went on to note that the Court of Appeal in *Kugathas* had gone on to say that there must be “dependency” and that “dependency is read down as meaning ‘support’, in the personal sense, and ... one adds, echoing the Strasbourg jurisprudence, ‘real’ or ‘committed’ or ‘effective’ to the word ‘support’”.
10. The judge then went on to find as follows (still at paragraph 11):

“I find in the present case there is, or ever was any, no ‘dependency’, as claimed by the appellant or his father, as understood in jurisprudence. He has lived in his family home out of preference and not necessity. In my view, it is not arguable on the particular facts of this appeal, the appellant enjoys ‘family life’ with his uncles, aunts and their children. It is too remote a connection.”

11. While it may be that on these facts another judge might have been more sympathetic to the argument that there was family life between this adult appellant and his parents, the judge’s finding that there was not cannot be said to be unreasoned. Even if the appellant had enjoyed “family life” with his parents, by reason of the matters set out below, this would not, in my judgment, have been material to the decision.
12. So far as the rejection of the credibility of the appellant and his father is concerned, it is right that the judge does not continue **after** his finding at paragraph 28 that he does not find either the appellant or his father “witnesses of truth” to give reasons for this finding; that is because, as I pointed out during the course of the hearing, his reasons were given at paragraphs 26 and 27. At paragraph 26 the judge noted that the appellant had initially said “that he has no relatives in Pakistan”. It was only during the course of the hearing that he “eventually accepted he has two sisters in Pakistan and that they are married”. The appellant’s story obviously changed, because he was then saying that “it is because they are married and have children of their own, said the appellant, he will not be able to look for them for support”. The judge did not find

this evidence credible, stating that “it is not unknown that for families to assist when the need arises. Not necessarily on a permanent basis but as a ‘start-up’”.

13. Then at paragraph 27 the judge noted that the appellant had “initially told me he has no uncles or aunts in Pakistan” but that “on persistent cross-examination the appellant admitted he has but he is not in contact with them”. So, again, the appellant changed his story.
14. The judge then, still at paragraph 27, considered the evidence given by the appellant’s father, Mr M Yaqoob, noting his evidence as follows:

“Mr M Yaqoob evaded the question a few times until I informed him that his evasion is not helpful and that I could draw adverse inference. He too eventually admitted that there are relatives in Pakistan but insisted the appellant should not be deported because he has life with his family in the UK and that there are security concerns in Pakistan.”

15. It was on the basis of the inconsistencies in the evidence of the appellant and his father, which were exposed during cross-examination during the hearing, that the judge was able to make the finding that neither witness was a witness of truth. That is a finding which was open to the judge and that finding is, in the judgment of this Tribunal, properly reasoned.
16. With regard to the argument advanced during the hearing that the appellant was not a “foreign criminal” because he did not fall within the definition within Section 117D of the 2002 Act, because he had neither been sentenced to a term of imprisonment of above one year and nor was he a “persistent offender”, as Mr Ouattara accepted during the course of the hearing when he was referred to the specific provisions within this Act, by Section 117D(2)(c)(ii) the definition therein of a “foreign criminal” includes a person who “has been convicted of an offence that has caused serious harm”. This appellant has been convicted of assault occasioning actual bodily harm and it cannot legitimately be argued that actual bodily harm is not by definition “serious harm”. It is in the context of these findings that the decision had to be made as to whether or not it was proportionate to deport this appellant, for which purpose the judge and this Tribunal would have to have regard not just to the public interest considerations set out with the new Part VA of the 2002 Act but also to paragraphs 398, 399 and 399A of the Immigration Rules.
17. Complaint is made concerning the judge’s finding in this regard that there was no family life between the appellant and his father and his family in this country, and also that the judge found at paragraph 18 that the appellant was not socially and culturally integrated in the UK because he had chosen to use an interpreter during the hearing. The judge makes this finding, at paragraph 18, as follows:

“The appellant has lived less than half his life in the UK. He attended school for two years in the UK, at least. Nevertheless, he gave evidence in Urdu. It does not seem he has integrated if he has to resort to his mother tongue when he finds himself in a formal setting. I do not accept that the appellant may not follow legal

language. In giving oral evidence he will be, and was, not invited to discuss jurisprudence. He would be asked to give evidence about himself and why he should not be deported and about any 'family life' or 'private life' he may have established in the UK. He would not be invited to discuss Immigration Rules or case law. He would not be invited to discuss what is meant by '*ab initio*' for example".

18. Mr Wilding on behalf of the respondent very properly accepted that the "difficulty with paragraph 18 is there for all to see" and that this was "not a consideration this Tribunal could or should endorse". This concession by Mr Wilding was entirely appropriate. When a person is facing court proceedings of such significance as this appellant was, it is entirely proper when English is not his or her first language for that applicant to be assisted by an interpreter. The fact that an interpreter is used is not an indication that that applicant has not integrated into UK life; rather it shows no more than that he has availed himself of a facility granted by the courts in this country to ensure that he gives his evidence as well as he possibly can.
19. However, this finding, while of itself not sustainable, was not material to the outcome of the appeal, for the reasons which follow.
20. The judge was obliged to have regard to what is set out within the Rules at paragraphs A398, 398, 399 and 399A, with regard to deportation and Article 8.
21. At A398 it is said as follows:

"A398. These Rules apply where:

 - (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention ..."
22. Although "foreign criminal" is not defined within the Rules themselves, as already noted, it has been defined in Section 117D of the 2002 Act, and clearly that is the definition which must apply. As already made clear above, this appellant is a "foreign criminal" because he is not a British citizen, he has been convicted in this country of an offence and that offence has caused serious harm.
23. Accordingly regard must then be had to paragraph 398 of the Rules, which sets out the factors that must be taken into consideration where a foreign criminal "claims that their deportation would be contrary to the UK's obligations under Article 8 ...".
24. This applies where the deportation is conducive to the public good either because the offender has been convicted of an offence for which they have been imprisoned for more than a year, or because "in the view of the Secretary of State, their offending has caused serious harm ...".

25. As has already been stated above, this appellant has been convicted of an offence which has caused serious harm, and so the judge has to then consider the following part of paragraph 398, which is that, in those circumstances,

“the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A”.

26. The circumstances set out within paragraph 399 apply where a foreign criminal has a genuine and subsisting parental relationship with a child or a partner, neither of which applies in this case, and so the judge then has to consider, as he did, the effect of paragraph 399A, which provides as follows:

“**399A.** This paragraph applies where paragraph 398(b) or (c) applies if -

- (a) the person has been lawfully resident in the UK for most of his life; **and** [my emphasis]
- (b) he is socially and culturally integrated in the UK; **and** [my emphasis]
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported”.

27. This paragraph applies because this is a deportation case under paragraph 398(c) (conducive deportation because the appellant has been convicted of an offence which has caused serious harm), but it is important to note that all three of the subSections within 399A have to be satisfied before 399A will apply. It is clear in this case, as the judge noted in his decision, that (a) is not satisfied because the appellant has not been lawfully resident in the UK for most of his life. He is 20 years old and has only been in this country since he was 14, as the judge found at paragraph 17 of his decision.

28. So far as (b) is concerned, I have also indicated above that the judge’s finding that he was not socially integrated because he chose to use an interpreter during the hearing is not only not sustainable but is one which, in Mr Wilding’s words, should not be endorsed by this Tribunal, but that is only one of the three parts which have to be satisfied.

29. With regard to (c) the judge made findings with regard to a lack of very significant obstacles to his integration into Pakistan. These are set out in particular in paragraphs 26 and 27 of the decision, which have been referred to above, where the judge found (because this eventually came out in evidence despite an inconsistent account having previously been given) that the appellant had not only sisters in Pakistan but also nephews and nieces and uncles and aunts. It was on this basis that the judge was not prepared to believe the evidence of the appellant and his father. The judge had also dealt with the issue of “very significant obstacles” from paragraphs 19 through to 23.

30. In my judgment, the judge's findings with regard to there not being very significant obstacles are sustainable.
31. As Mr Wilding noted in the course of his submissions, which of course is correct, the appellant would in any event have to go much further than this in order to justify a finding that his deportation would not be proportionate in circumstances where (a) of paragraph 399A was not satisfied, because by virtue of paragraph 398, where neither paragraph 399 nor 399A applies "the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A".
32. In other words, given that the appellant has not been lawfully resident in the UK for most of his life, he needs to do more than show that he is socially and culturally integrated in the UK and that there would be very significant obstacles to his reintegration in Pakistan (the latter of which, in the judgment of this Tribunal, the judge was entitled to find he had not shown). Even if it was arguable that there would be very significant obstacles, on the basis of the arguments advanced to this Tribunal as well as the evidence which appears to have been before the judge, there is simply no basis upon which this Tribunal could find that the appellant had demonstrated very compelling circumstances over and above those set out within subparagraphs (b) and (c) of paragraph 399A. Even if Judge Lawrence had got to the stage where he had to consider what else there was in evidence in this case, there was nothing which could arguably have justified him in finding that this appellant's deportation was disproportionate.
33. It follows that despite the criticism that this Tribunal has with regard to the findings he made at paragraph 18 of his decision, he did not materially err in law and for this reason there is no basis upon which this decision can properly be set aside. My decision is accordingly as follows:

Decision

There being no material error of law in the decision of First-tier Tribunal Judge N M K Lawrence, the appellant's appeal against Judge Lawrence's decision is dismissed and the decision of the First-tier Tribunal is affirmed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Upper Tribunal Judge Craig

Date: 25 June 2018